IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2783 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAURASTHRA SOLVENT EXTRACTION CO PVT LTD

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:

1. Special Civil Application No. 2783 of 1998

MS THAKOR FOR MR MIHIR H JOSHI for Petitioners

MR RJ OZA for Respondent No. 1

MR PK SHUKLA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 25/04/2005

C.A.V. JUDGEMENT

In this petition, the petitioners have challenged the order dtd.26/2/1998 passed by the respondent for

levying damages of Rs.3,56,713.00 under sec.14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1959.

2. Ms.Thakor on behalf of Mr.Mihir Joshi, learned counsel for the petitioners has argued that the first petitioner No.1 is a Company registered under the provisions of the Companies Act and is carrying on business of solvant extraction and is regularly paying Fund Commissioner the contribution payable by it under the Act since last 35 years and during all these period, no default is committed by the petitioner company. She has further argued that a notice dtd.25/7/1996 was issued by Assistant Provident Fund Commissioner seeking reconcile of deficit of Rs.84,071-00 in the payment of contribution for the year March, 1994 to February 1995 but since the account of the petitioner company did not indicate any deficit payment of provident fund contribution, the petitioner inquired into the matter and came to know that Bharatbhai Jasani of Jasani Associates, the Consultant of the petitioner company had adopted a modus operandi by which the amount of contribution would be collected from his clients including the petitioner on the last date in cash and part of the amount would be deposited in the bank in the relevant account and Challan showing full payment are returned to the petitioners so that the defalcation does not come to light. She further argued that the said fraud did not come to the light even through the office of the Provident though they received two contradictory statement of deposits, one from the Bank and one from the employer. She has further argued that annual audit carried out by the officers of Rajkot Office, copy of which is produced at Annexure-B also did not reveal the said mischief. She has further argued that the petitioner replied the said notice dtd.25/7/1996 vide letter dtd.5/8/1996 stating all the facts, copy of which is produced at Annexure-C. When the petitioner inquired in person in Rajkot Office, he was informed that the amount of deficit has been paid by Bharat Jasani in January 1996 without intimation to the petitioner and therefore, there was no demand of outstanding amount pursuant to the said notice. She has further argued that as the said Bharat Jasani committed fraud, the petitioner filed Criminal Case No.455 of 1996 before the Chief Judicial Magistrate, Rajkot against said Bharat Jasani for the offences punishable under sections 408, 406, 461, 468 and 471 of Indian Penal Code, copy of which is produced at Annexure-E, wherein the learned Magistrate has ordered investigation under sec.156(3) of the Code of Criminal Procedure. She has further argued that thereafter, the petitioner received notice dtd.14/8/1996

from the office of Assistant Provident Fund Commissioner alleging short payment of Rs.3,12,270-00 for the period from 1992-93 to 1994-95 and the petitioner immediately paid the entire amount within two days as demanded by the respondent, vide Challan dtd.24/8/1996. She has further argued that it is inconceivable that the office of the Provident Fund Commissioner was not aware about the default though they received two different Challans. The petitioners have been cheated by their Consultant namely Bharat Jasani, by issuing the Challan showing full payment and the authorities had not raised any objection regarding deficit contribution. She has further argued that if the authority had informed immediately, the petitioner could have paid the said amount earlier and it is the authority who issued notice for the first time on 14/8/1996 for the alleged deficit payment of Rs.3,12,270-00 for the period from 1992-93 to 1994-95 and there is delay on the part of the respondent and hence the petitioners are not liable for the damages. She has further argued that the the petitioner has paid the entire contribution for the period from 1992-93 to 1994-95 but his Consultant has cheated the petitioners by issuing Challan showing the full payment of contributions. However, on receipt of the notice from the respondent, the petitioner has paid immediately the amount so demanded and thus the petitioner has made the payment twice. She has further argued that there is no fault on the part of the petitioner to pay the contribution. She has also argued that the petitioner has also filed criminal complaint against said Bharat Jasani who has committed fraud and for the delayed payment, the petitioner is not responsible. She has further argued that there is no delay on the part of the petitioner to deposit the contribution. She has further argued that in reply to the notice issued by the respondent under sec.14-B, the petitioner made a detailed representation / reply vide letter dtd.26/10/1996 and since the second petitioner was not in Rajkot at the relevant time, he sought time by letter dtd.8/12/1997 and telegram dtd.11/12/1997 and requested to give another date for hearing, however, the respondent has passed the impugned order mechanically and illegally, without providing sufficient opportunity of being heard. She has further argued that the delay has been caused on the part of the respondent authority, as though they received two different Challan, they did not inform the petitioner earlier and on the other hand the Challan issued by the consultant of the petitioner shows that full amount has been deposited and hence, the petitioner cannot be held responsible, however, on receipt of the notice, the petitioner has immediately made the payment once again

and thus the petitioner is victim. Consequently, it is argued that the impugned order is illegal and prayed to quash and set aside the same.

3. On the other hand, Mr.PK Shukla, learned counsel for the respondent has argued that the Employee's Provident Fund Organization has not authorized any provident fund consultant, but some employers engage middleman for their convenience at their own risk and the petitioner Company has become victim of such middleman. Mr.Jasani, the Consultant of the petitioner Company is neither qualified or authorized consultant. It is further argued that according to the scheme of the provisions, the employer has to render all liabilities under the Act; Shri Jasani Associates have cheated the employer, but the petitioner being principal employer is liable to face the consequences of the irregularities of his agent's. It is also argued that the employer should not allow his consultant to pay the Provident Fund dues by cash in absence of express provision in the Employees Provident Fund Scheme, 1952. It is also argued that M/s.Jasani Associates might alone be indulging in defalcation, but when the petitioner has permitted M/s.Jasani Associates to pay the contribution in cash instead of cheque, the petitioner is also equally liable. It is also argued that the deficit amount was demanded later on but the same has been paid by the petitioner. It is also argued that though the competent authority was free to levy 100% damages as per sec.14-B of the Act, only minimum rate to 37% has been imposed while passing the impugned order considering the fact that M/s.Jasani Associates have cheated the petitioner employer. Learned counsel for the respondent has also drawn my attention to the relevant provisions of the Act and has placed reliance on the following citations;
[1] 1979 (4) SCC 573
[2] GLR 37 (1) 337.

Consequently, it is argued by the learned counsel for the respondent that the impugned order is just, legal and proper and hence this court may not interfere with the impugned order.

4. Having heard the learned counsel for the respective parties and considering the evidence on record, it is clear that the authorities has issued notice for the first time on 14/8/1996 alleging short payment of Rs.3,12,270/- for the period from 1992-93 to 1994-95. There is inordinate delay on the part of the respondent in issuing the notice informing the petitioner for deficit in making payment of contribution. Though

the respondent had obtained two Challans, one from the Bank and one from the employer, the respondent did not informed the petitioner about the short payment of contribution for number of years. Not only that but in the audit carried out by the officers of the respondent also the said fraud committed by the consultant of the petitioner did not reveal and after an inordinate delay, the respondent issued notice to the petitioners, and no explanation is given on behalf of the respondent for inordinate delay in issuing notice. The respondent is liable for the delay. The petitioner employer was not aware about the fraud committed by his consultant, as the Challans issued to him by his consultant show that full amount has been paid. If the respondent had informed the petitioner earlier, the petitioner could have deposited the deficit amount forthwith. The petitioner has deposited the amount as demanded in the notice forthwith and there is no delay on the part of the petitioner in making the deficit amount of contribution. In fact, the petitioner has paid the amount twice, as firstly the petitioner paid the amount to his consultant and secondly paid the amount on receipt of the notice immediately once again and thus, the petitioner is victim and has been cheated by his consultant. Further, the petitioner has filed a criminal complaint against his consultant, as noted above, wherein investigation is ordered under sec.156(3) of the Cr.PC. In reply, it is admitted by the respondent that the petitioner has been cheated by his consultant and the petitioner is victim. In view of the above, the petition is required to be allowed and the same is accordingly allowed. The impugned order dtd.26/2/1998 passed by the respondent against the petitioners is hereby quashed and set aside. Rule is made absolute.

(SHARAD D.DAVE,J.)

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